

REMARKS/ARGUMENTS

Applicants acknowledge the Final Office Action dated July 28, 2008 and request reconsideration of the application as amended. Applicants remarks as follow are numbered to correspond to the numbered paragraphs in the Office Action.

1-2. Applicants continue to disagree with the Examiner's perception that Kotliar (US 5,924,419) discloses or even suggests a mechanism for pulse dosing. Nevertheless, Applicants are willing to amend Claim 1 to incorporate the subject matter of allowable Claim 5. However, rejected Claim 9 is retained without further amendment, as Applicants are convinced that the claimed subject matter is neither anticipated nor made obvious.

3-6. Although Applicants remain of the opinion that Claim 1 as previously presented was directed to patentable subject matter, Applicants to facilitate allowance of the application nevertheless have amended Claim 1 without prejudice to incorporate the subject matter of allowable Claim 5. On the other hand, Applicants do request reconsideration of Claim 9 as previously submitted.

After a careful reading of Kotliar, and without reference to the disclosure in the present application, one can conclude that Kotliar discloses only a nitrogen-enriched gas delivery system and not by any reasonable logic a gas delivery system having means as claimed for selectively delivering either the nitrogen enriched gas or the oxygen enriched gas to a user during inhalation by the user. As described beginning at Column 2, line 57, the preferred embodiment of Kotliar uses a sieve material that adsorbs nitrogen by conventional pressure swing adsorption but, rather than discharging the nitrogen to the atmosphere as a waste gas, recycles the nitrogen to be combined with ambient air at surge tank 27 for delivery to the user. In that embodiment, valves 22 and 23 comprise only means to discharge the oxygen enriched gas as a waste gas to the atmosphere and not to the user. Contrary to the Examiner's reading of Kotliar at Column 4, lines 12-18, neither does this alternate version provide means for selective delivery of an oxygen enriched gas to the user. Rather, it clearly describes a system in which the sieve material adsorbs oxygen rather than nitrogen, which in itself was nothing new even to Kotliar, but Kotliar then changes the plumbing so that the nitrogen enriched gas after adsorption of the oxygen then is

delivered through "means" 22 and outlet 25 to the user through surge tank 27. From Kotliar's express description that conduit 26 in this alternative embodiment is disconnected from surge tank 27, it is clear that the oxygen adsorbed by the carbon type sieve material can only be discharged into the atmosphere as a waste product and not by any means directed to the user. Applicants respectfully submit that suggesting otherwise requires knowledge of the Applicants' own invention.

7. Applicants gratefully acknowledge the allowability of Claims 2-8 and 10-15. As noted above, Claim 1 has been amended to include the subject matter of Claim 5 and Claim 5 cancelled. Thus, Claim 1 along with Claims 2-4 and 6-8 should now be in condition for allowance. In anticipation of the Examiner's recognition that Kotliar does not anticipate or make obvious the invention of Claim 9 and allows Claim 9, Claims 10-15 should also be in condition for allowance.

8. Applicants appreciate the opportunity to call the Examiner but believe that the amendment to Claim 1 and these remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

In view of the foregoing, it is believed that the application should now be allowed, which action is respectfully requested.

Respectfully submitted,

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